

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

## ORDER ADOPTING REPORT AND RECOMMENDATION

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Doyle W. Argo, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Argo entered a Report and Recommendation on September 30, 2005, recommending that this action be dismissed without prejudice unless the Plaintiff paid the full filing fee within twenty days. Plaintiff timely objected, agreeing with Judge Argo's observation that venue was improper in this district, and asking that the case, along with his application to proceed in forma pauperis, be transferred and decided in the Northern District of Oklahoma, where venue is proper.

There is no dispute regarding the facts in this case, only whether the Complaint should be transferred without prepayment of costs or dismissed for failure to pay. Frankly, it appears to make little difference. Judge Argo advised Plaintiff of his right to file the suit in the proper court, which he has been free to do without regard to any decision on transferring

venue. Indeed, it was not part of Judge Argo's recommendation that the case be transferred to the Northern District, only that the application for proceeding in forma pauperis be denied. Procedurally, it appears that is the correct result, and Plaintiff has offered no argument of fact or law counseling a contrary result.

Accordingly, the Report and Recommendation of the Magistrate Judge is adopted, in its entirety. Because Plaintiff agrees that venue is not proper in this court, there is no purpose to be served in permitting him additional time in which to pay the filing fee here. Instead, the Court dismisses this action, without prejudice.

IT IS SO ORDERED this 29th day of December, 2005.



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ROBIN J. CAUTHRON  
United States District Judge